



Docket No. 6032-023

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Post Office as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on

Date:

6-12-01

Name:

Melissa Scanzillo

Signature:

Melissa Scanzillo
Clifford Chance Rogers & Wells LLP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Hendler et al.

Filed: December 29, 2000

Group Art Unit: to be determined

Serial No: 09/751,190

Examiner: to be determined

For: STREAMING OF ARCHIVE FILES

RECEIVED

JUL 11 2001

OFFICE OF PETITIONS

**PETITION UNDER 37 CFR §1.47 IN SUPPORT OF ACCEPTING A DECLARATION
WHEN AN INVENTOR REFUSES TO SIGN**

Commissioner for Patents
Office of Petitions
Washington, D.C. 20231

Sir:

This petition is being filed in response to an inventor's refusal to join in an application for a patent. Applicants respectfully submit the following:

1. ☒ Copy of Declaration of Ms. Zorina Ben-Zvi under 35 CFR 1.47(a) in Support of Accepting a Declaration when an Inventor Refuses to Sign and Exhibits.
2. ☒ Copy of Declaration of Mr. Udi Volk under 35 CFR 1.47(a) in Support of Accepting a Declaration when an Inventor Refuses to Sign and Exhibits.
3. ☒ Fee as set forth under 37 CFR §1.17(i).

Applicants respectfully state that a *bona fide* and diligent attempt was made to obtain Mr. Schmucl Melamed's signature and that Mr. Melamed refused to execute the declaration of inventorship. The enclosed declaration for this application bears Mr. Melamed's name and has been executed by the other co-inventors.

The last known address of Mr. Melamed is Dror St. 7, Hod Hasharon, Israel.

06/15/2001 KZEWDIE 00000113 500521 09751190

01 FC:122 130.00 CH

06/12/2001 AXELLEY 00000025 500521 09751190

01 FC:122 130.00 CH

NYA 355385.1

As detailed in the attached Declarations of Ms. Zorina Ben-Zvi and Mr. Udi Volk, Mr. Melamed is a former employee of Appstream. While employed at Appstream, Mr. Melamed contributed to the invention claimed in the parent case to the present application and executed a declaration and power of attorney in that case. A copy of this executed declaration is attached as an exhibit to the Declaration of Mr. Udi Volk. Aspects of the present invention were developed after Mr. Melamed's departure from Appstream. Because subject matter from the parent application to which Mr. Melamed contributed appears in at least one claim in the present application, Mr. Melamed has been named as a co-inventor.

The present application has not been published, has been kept confidential, and discloses and claims subject matter developed after Mr. Melamed's departure from Appstream. Because Mr. Melamed is no longer employed by Appstream, he was offered a copy of the present application to review preparatory to execution of the Declaration on the condition that he execute a standard non-disclosure agreement (NDA). After repeated discussions with Mr. Melamed regarding the applications and the need to execute the Declaration of Inventorship, Mr. Melamed indicated that he would not sign the NDA or execute the declaration for this application.

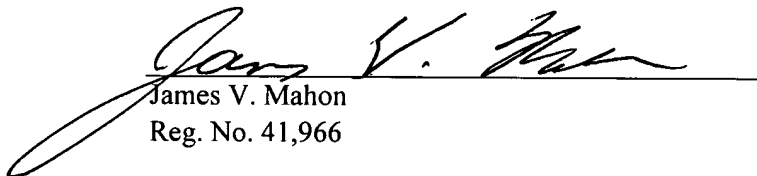
Applicants respectfully request the grant of this Petition.

The Commissioner is hereby authorized to charge the petition fee of \$130.00 and any additional fee, or credit any overpayment to Deposit Account No. 50-0521. A duplicate copy of this transmittal is enclosed.

Respectfully submitted,

Date:

6/8/01


James V. Mahon
Reg. No. 41,966

Clifford Chance Rogers & Wells LLP
200 Park Avenue
New York, NY 10166-0153
Telephone: (212) 878-8073



Docket No. 6032-23

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Post Office as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on

Date:

April 3, 2001

Name:

Melissa Spanzillo

Signature:

Melissa Spanzillo

Clifford Chance Rogers & Wells LLP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Hendler et al.

Filed: December 29, 2000

Group Art Unit: to be determined

Serial No: 09/751,190

Examiner: to be determined

For: **STREAMING OF ARCHIVE FILES**

Commissioner for Patents
Washington, D.C. 20231

DECLARATION OF JAMES V. MAHON

SIR:

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JUL 11 2001

OFFICE OF PETITIONS

I, James V. Mahon, hereby declare as follows:

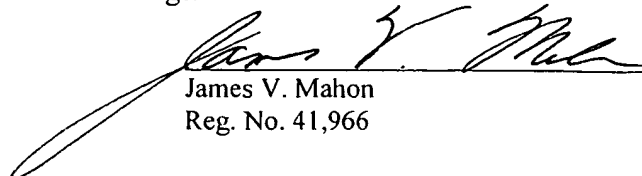
1. I am a Patent Attorney with the law firm of Clifford Chance Rogers & Wells LLP. I have been preparing patent applications for the past 5 years. It is normal procedure for me to take the following steps when filing an application.

- a. Review all transmittal papers in connection with the application;
- b. Review all copies made of the application for filing;
- c. Review the Certificate of Mailing by Express Mail;
- d. Review the postcard indicating all documents enclosed; and
- e. Review the file and client copies of all papers.

2. I reviewed the contents of the package before mailing with regard to the above Utility Patent Application which consisted of the Specification (26 pages), Abstract (1 page), Claims (7 pages), Drawings – informal (8 sheets), Information Disclosure Statement – 3 references on December 29, 2000.

3. In the course of reviewing the application for filing, I routinely make use of a check-list identifying all papers (including specification and drawings) to be filed with the application. A copy of this check list, completed immediately prior to the mailing of the application, was present in our patent prosecution records and bears my initials, indicating that I reviewed the application and confirmed that the drawings were present upon mailing of the application. A copy of this check list is attached.

The foregoing is true to the best of my belief and knowledge.


James V. Mahon
Reg. No. 41,966

Docket No. 6032-023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: Hendler et al.

Filed: December 29, 2000 Group Art Unit: to be determined

Serial No: 09/751,190 Examiner: to be determined

STREAMING OF ARCHIVE FILES

Commissioner for Patents
Washington, D.C. 20231

**DECLARATION OF MS. ZORINA BEN-ZVI UNDER 37 CFR 1.47(a) IN SUPPORT OF
ACCEPTING A DECLARATION WHEN AN INVENTOR REFUSES TO SIGN**

Sir:

1. My name is Zorina Ben-Zvi. I am the Finance Manager at Appstream LLC and an associate of Mr. Udi Volk.
2. I have had numerous telephone conversations with Mr. Shmuel Melamed over the past several months regarding obtaining his signature on Declarations required in connection with various U.S. patent applications.
3. On March 27, 2001, I sent a package to Mr. Melamed containing various documents including copies of Declarations for the following applications:

Method And Apparatus For Determining Order Of Streaming Modules

Filed: 12/22/2000 Serial No: 09/745,646

Attorney Docket No. 6032/17

Method And Apparatus For Decreasing The User-Perceived
System Response Time In Web-Based Systems

Filed: 12/22/2000 Serial No: 09/747,260

Attorney Docket No. 6032/18

Apparatus And Method For Improving The Delivery Of Software
Applications And Associated Data In Web-Based Systems

Filed: 12/22/2000 Serial No: 09/746,877

Attorney Docket No. 6032/19

Method And System For Executing Network Streamed Applications

Filed: 12/28/2000 Serial No: 09/750,835

Attorney Docket No. 6032/20



Method And System For Streaming Software Applications To A Client
Filed: 12/28/2000 Serial No: 09/751,105
Attorney Docket No. 6032/21

Streaming Of Archive Files
Filed: 12/29/2000 Serial No: 09/751,190
Attorney Docket No. 6032/23

A copy of the messenger certificate indicating safe delivery of this package is attached as **Exhibit A**.

4. After calling Mr. Melamed to inquire about the status of the documents sent by messenger, Mr. Melamed indicated that he had lost the documents. On April 29, 2001, I sent an e-mail to Mr. Melamed having a number of attached documents, including electronic copies of the documents listed above, hard copies of which were sent in the March 27, 2001 package. A printout of the e-mail is attached as **Exhibit B**.
5. On May 3, 2001, I sent an e-mail to Mr. Melamed having an attached document prepared by our U.S. patent counsel which discussed the various papers requiring his signature. A copy of this e-mail and the attached document is attached as **Exhibit C**.
6. One issue which I discussed with Mr. Melamed was the confidential nature of the applications. Because the applications contain information which is not publicly available and Mr. Melamed is no longer an employee of Appstream, copies of the applications were offered to him for review on the condition that he execute a non-disclosure agreement.
7. On May 9, 2001, I faxed a non-disclosure agreement addressing the patent applications at issue to Mr. Melamed. A copy of the faxed document with the fax receipt indicating proper transmission of the document is attached as **Exhibit D**.
8. Also on May 9, 2001, I had a conversation with Mr. Melamed regarding execution of a non-disclosure agreement. No agreement was reached.
9. During a subsequent telephone conversation, Mr. Melamed indicated that that neither he nor his attorney would execute the non-disclosure agreement and that, consequently, he would not review the patent applications or execute the Declarations.
10. I have attempted to contact Mr. Melamed by telephone several times during the past two weeks but he has not answered any of my calls.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 6/5/01

Zorine Ben-Zvi
Zorina Ben-Zvi

TO WHOM IT MAY CONCERN

EXHIBIT A



B.B. DELIVERY SERVICE FOR APPSTREAM LTD.

We, "Adir LTD." (delivering services) confirm that on the 27, March, 2001 our employee Mr. Amnon delivered an envelope with documents from AppStream LTD. To 5 Hanagar St, Hod Hasharon.

The documents were delivered for Mr. Sam Melamed signing.

We also confirm that there were no complains about the delivering not being performed.

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JUL 11 2001

OFFICE OF PETITIONS

512448754 D.N.
Signature 01-7514433 1212

SOLUTIONS
products & services
technology
service level

COMPANY

about us
job openings
news

CUSTOMERS

web sites
success stories

NETWORK

map
noc

PARTNERS

network
technology
integrators

links

contact-us

site-map

ABOUT US

About Eplication

Eplication is a "one stop shop" global solution for ALL content. Eplication's network of data serves STATIC, DYNAMIC, DOWNLOADED and STREAMED content delivered locally.

Read about Eplication's **Products and Services**.

Our Research & Development team develops state-of-the-art networking and content processing software **technology**. As the leader in Multi-Peer Delivery Networking (MPDN), Eplication has made substantial technological improvements through R&D and intelligent network deployment re Next-Generation network architecture.

The team

Yves Bigio – Chief Executive Officer

Yves Bigio has over 15 years experience in successfully managing entrepreneurial ventures. Prior to he co-founded and managed Phone Systems & Network SA, a French based international telecommunications company.

Samuel Melamed – President & CTO

Founded Eplication with a perspective of enhancing internet traffic based on innovative network applications. Samuel Melamed has over 15 years of R&D experience in both large companies. His expertise is in communications algorithms, large system design and internet technologies. Prior to Eplication, Sam Melamed was the VP R&D of AppStream inc. where he was a co-author of several patents.

Eric Saiz – Chief Operational Officer

Eric Saiz's career has been focused on successfully managing entrepreneurial businesses. He is the co-founder of Phone Systems & Networks SA. Eric holds the following French degrees: Ecole Polytechnique (Paris), MBA INSEAD (1984).

Corporate Info

Israel – Eplication Ltd.
Research & Development, Network Operating
Center
5 Hanagar St.
Hod Hasharon
Tel : 972 (0)9 741 2220
Fax : 972 (0)9 746 0527

Eplication – European Office
Sales and Marketing
120, avenue Charles de Gaulle
92200 Neuilly-sur-Seine, France
Tel : 33 (0)1 46 40 39 60
Fax : 33 (0)1 46 40 39 63

For product or sales information, please contact Sales Dept at : sales@eplication.com

For press and public relations, please contact Press Relations Dept at : press@eplication.com



EXHIBIT B

From: Zorina BenZvi [Zorina.Benzvi@AppStream.co.il]
Sent: Sunday, April 29, 2001 4:35 AM
To: 'sam@eplication.com'
Subject: FW: Documents for Sam Melamed's signature

Importance: High



315523_1.DOC 327623_1.DOC 327622_1.DOC 1195176_1.DOC 1195182_1.DOC 326412_1.DOC 326408_1.DOC



326341_1.DOC 1210020_1.DOC 326349_1.DOC 326347_1.DOC 326343_1.DOC 326344_1.DOC 326362_1.DOC



1209894_1.DOC 326343_1.DOC 326352_1.DOC 1195184_1.DOC

-----Original Message-----

From: Melissa.Scanzillo@cliffordchance.com
[mailto:Melissa.Scanzillo@cliffordchance.com]
Sent: Monday, April 23, 2001 20:46
To: zorina.benzvi@appstream.co.il
Cc: Mitchell.Feller@cliffordchance.com
Subject: Documents for Sam Melamed's signature
Importance: High

<<315523_1.DOC>> <<327623_1.DOC>> <<327622_1.DOC>> <<1195176_1.DOC>>
<<1195182_1.DOC>> <<326412_1.DOC>> <<326408_1.DOC>> <<326341_1.DOC>>
<<1210020_1.DOC>> <<326349_1.DOC>> <<326347_1.DOC>> <<326343_1.DOC>>
<<326344_1.DOC>> <<326362_1.DOC>> <<1209894_1.DOC>> <<326343_1.DOC>>
<<326352_1.DOC>> <<1195184_1.DOC>> Dear Ms. Ben-Zvi:

With regard to your e-mail to Mitch Feller, attached are the documents for Sam Melamed's signature.

Please contact me should you require additional information.
Thank you for your assistance.
Melissa Scanzillo

EXHIBIT C

From: Zorina BenZvi [Zorina.Benzvi@AppStream.co.il]
Sent: Thursday, May 03, 2001 6:57 AM
To: 'sam@eplication.com'
Subject: Dear Mr



samletter_.doc

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JUL 11 2001

OFFICE OF PETITIONS

Dear Mr. Melamed:

Enclosed please find a number of documents to be executed by you in connection with various Appstream patent matters.

As we have discussed, Appstream has recently filed several patent applications on inventions which are based, in part, on the original Streaming Modules patent application to which you contributed. In accordance with U.S. patent law, you have been named as a co-inventor on these new cases as well and thus must execute the various documents related to these cases. Enclosed is a copy of the application and a Combined Declaration and Power of Attorney for each of the applications listed below:

METHOD AND APPARATUS FOR DETERMINING ORDER OF STREAMING MODULES

Filed: 12/22/2000 Serial No: 09/745,646

**METHOD AND APPARATUS FOR DECREASING THE USER-PERCEIVED
SYSTEM RESPONSE TIME IN WEB-BASED SYSTEMS**

Filed: 12/22/2000 Serial No: 09/747,260

**APPARATUS AND METHOD FOR IMPROVING THE DELIVERY OF SOFTWARE
APPLICATIONS AND ASSOCIATED DATA IN WEB-BASED SYSTEMS**

Filed: 12/22/2000 Serial No: 09/746,877

METHOD AND SYSTEM FOR EXECUTING NETWORK STREAMED APPLICATIONS

Filed: 12/28/2000 Serial No: 09/750,835

METHOD AND SYSTEM FOR STREAMING SOFTWARE APPLICATIONS TO A CLIENT

Filed: 12/28/2000 Serial No: 09/751,105

STREAMING OF ARCHIVE FILES

Filed: 12/29/2000 Serial No: 09/751,190

The Declarations affirm that you have contributed to the claimed invention in the identified applications (via the earlier related Streaming Module invention) and gives Clifford Chance Rogers & Wells, Appstream's U.S. patent counsel, authority to prosecute the applications before the U.S. Patent Office. Please review the applications and Declarations and, provided everything is in order, sign and date each Declaration where indicated. Note that the applications are confidential and should not be disclosed to a third-party without prior approval from Appstream and the execution of a suitable non-disclosure agreement.

Also enclosed for your signature is an Assignment of rights in these inventions to AppStream, Inc. This assignment memorializes Appstream's rights to the inventions as specified under Israeli law and as noted in your termination agreement. This document should also be signed and dated where indicated.

Finally, enclosed is a Revocation of Power of Attorney and Appointment of New Power of Attorney for several U.S. patent applications as well as several Power of Attorney forms which must be executed in connection with international applications which we have filed based upon pending Appstream patent applications. These forms authorize Clifford Chance Rogers & Wells to prosecute the applications on behalf of Appstream and to gain access to the official Patent Office file, if needed. The applications at issue are:

LINK PRESENTATION AND DATA TRANSFER

Filed: January 26, 1999 Serial No: 09/237,792

METHOD AND APPARATUS FOR DETERMINING ORDER OF STREAMING MODULES

Filed: January 21, 2000 Serial No: 60/177,736 (U.S. Provisional application)

METHOD AND APPARATUS FOR IMPROVING THE USER-PERCEIVED SYSTEM
RESPONSE TIME IN WEB-BASED SYSTEMS

Filed: January 21, 2000 Serial No: 60/177,444 (U.S. Provisional application)

LINK PRESENTATION AND DATA TRANSFER

Filed: January 26, 2000 Serial No: PCT/US00/02190 (International Application)

METHOD AND APPARATUS FOR DETERMINING ORDER OF STREAMING MODULES

Filed: January 17, 2001 Serial No: PCT/US01/01596 (International Application)

METHOD AND APPARATUS FOR IMPROVING THE USER-PERCEIVED
SYSTEM RESPONSE TIME IN WEB-BASED SYSTEMS

Filed: January 17, 2001 Serial No: PCT/US01/01501 (International Application)

These applications were either filed prior to your departure from Appstream or are correspond to one of the recently filed applications, copies of which are enclosed, and should be signed and dated where indicated.

Please return all of the executed documents to us and we will forward them to our U.S. counsel for filing in the U.S. Patent Office.

RECEIVED
JUL 11 2001
OFFICE OF PETITIONS



AppStream™

NONDISCLOSURE AGREEMENT

THIS AGREEMENT governs the disclosure of information by and between APPSTREAM INC. ("AppStream") and _____ (the "Recipient") as of _____ (the "Effective Date").

2. As used herein, "Confidential Information" shall mean any and all technical and non-technical information provided by AppStream to the Recipient, whether in oral, written, graphic or electronic form, including but not limited to (a) patent and patent applications, (b) trade secrets, and (c) proprietary information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third parties. For purposes of this Agreement, the term "AppStream" includes all corporate affiliates of AppStream.
3. The Recipient agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information of AppStream, except as approved in writing by AppStream, and will use the Confidential Information for no purpose other than the purpose described in Exhibit A. Notwithstanding the above, the Recipient shall not be in violation of this Section 3 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides AppStream with prior written notice of such disclosure in order to permit AppStream to seek confidential treatment of such information. The Recipient shall only permit access to Confidential Information of AppStream to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.
4. The Recipient shall immediately notify AppStream upon discovery of any loss or unauthorized disclosure of the Confidential Information of AppStream.
5. The Recipient's obligations under this Agreement with respect to any portion of AppStream's Confidential Information shall terminate when the Recipient can demonstrate that: (a) it was in the public domain at the time it was communicated to the Recipient by AppStream; (b) it entered the public domain subsequent to the time it was communicated to the Recipient by AppStream through no fault of the Recipient; (c) it was in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient by AppStream, as evidenced by written records; (d) it was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was communicated to the Recipient by AppStream, as evidenced by written records; (e) it was communicated by AppStream to an unaffiliated third party free of any obligation of confidence; or (f) it is independently developed by the Recipient without the use of or reference to Confidential Information of AppStream and such independent development can be shown by documentary evidence maintained contemporaneously with such development.
6. Upon termination or expiration of the Agreement, or upon written request of AppStream, the Recipient shall promptly return to the other all documents and other tangible materials representing AppStream's Confidential Information and all copies thereof.

7. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information of AppStream disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. The Recipient shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of AppStream. The Recipient shall not reverse-engineer, decompile, disassemble or otherwise modify any software disclosed to it by AppStream under this Agreement.
8. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of AppStream by the Recipient shall remain the property of AppStream and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by AppStream.
9. This Agreement shall continue in full force and effect for so long as the Recipient continues to receive Confidential Information. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. The Recipient's obligations under this Agreement shall survive termination of the Agreement between the parties and shall be binding upon the Recipient's heirs, successors and assigns. The Recipient's obligations hereunder shall continue in full force and effect with respect to non-technical sales, marketing, and financial Confidential Information for five (5) years from the date of disclosure of such Confidential Information. The Recipient's obligations with respect to all technical Confidential Information shall be terminated only pursuant to Section 5.
10. This Agreement shall be governed by and construed in accordance with the laws of California without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Santa Clara County, California, and the parties hereby consent to the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties hereto.
11. Each party acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. The Recipient agrees to indemnify AppStream for any loss or damage suffered as a result of any breach by the Recipient of the terms of this Agreement, including any reasonable fees incurred by AppStream in the collection of such indemnity.
12. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
13. The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns.
14. APPSTREAM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT, REGARDING THE CONFIDENTIAL INFORMATION, INCLUDING COMPUTER SOFTWARE AND/OR HARDWARE PROVIDED BY APPSTREAM TO THE RECIPIENT. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". AppStream shall not be liable to the Recipient for any special, incidental, consequential or punitive damages arising from or relating to any alleged breach of this

Agreement based on any theory of liability or any damages arising from or relating to Recipient's use or inability to use any Confidential Information.

15. The Recipient shall not export, directly or indirectly, any technical data acquired from AppStream pursuant to this Agreement or any product utilizing any such data to any country (i) for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval or (ii) otherwise in violation of applicable laws or regulations.

16. Nothing in this Agreement shall obligate either party to proceed with any transaction between them.

17. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

18. As used in this Agreement, the terms "AppStream" and the "Company" shall include any of their respective corporate affiliates, provided that Digital Island, Inc. and the Customer (a) shall be responsible for the observance and proper performance by all of their respective corporate affiliates of the terms and conditions of this Agreement, and (b) if requested by the Disclosing Party, shall cause such corporate affiliate to return or destroy all confidential information in accordance with Section 6, prior to a corporate affiliate ceasing to be an affiliate thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

APPSTREAM INC.

By: _____

Name: _____

Date: _____

Address: 2595 East Bayshore Road
Palo Alto, CA 94303

Facsimile: 650.251.2595

Email: _____

By: _____

Name: _____

Date: _____

Address: _____

Facsimile: _____

Email: _____

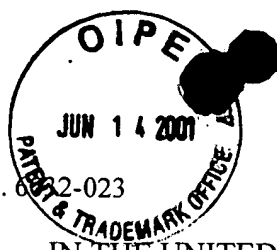
EXHIBIT A

Purpose for which Confidential Information is to be disclosed:

Patents:

- (i) 6032-011 -- "Link Presentation and Data Transfer"
- (ii) 6032-012 -- "Link Presentation and Data Transfer"
- (iii) 6032-013 -- "Method and Apparatus for Determining Order of Streaming Modules"
- (iv) 6032-017 -- "Method and Apparatus for Determining Order of Streaming Modules"
- (v) 6032-015 -- "Method and Apparatus for Improving the User Perceived System Response Time In Web Based Systems"
- (vi) 6032-018 -- "Method and Apparatus for Decreasing the User Perceived System Response Time In Web Based Systems"
- (vii) 6032-019 -- "Apparatus and Method for Improving the Delivery of Software Applications and Associated Data in Web Based Systems"
- (viii) 6032-020 -- "Method and System for Executing Network Streamed Applications"
- (ix) 6032-021 -- "Method and System for Streaming Software Applications to a Client"
- (x) 6032-023 -- "Streaming of Archive Files"

Docket No. 6032-023



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Hendler et al.

Filed: December 29, 2000 Group Art Unit: to be determined

Serial No: 09/751,190 Examiner: to be determined

For: STREAMING OF ARCHIVE FILES

Commissioner for Patents
Washington, D.C. 20231

**DECLARATION OF MR. UDI VOLK UNDER 37 CFR 1.47(a) IN SUPPORT OF ACCEPTING A
DECLARATION WHEN AN INVENTOR REFUSES TO SIGN**

Sir:

1. My name is Udi Volk. I am the Chief Technology Officer of Appstream LLC, the Israeli subsidiary of Appstream, Inc.
2. Mr. Shmuel Melamed is a former employee of Appstream LLC.
3. During his employment at Appstream, LLC, Mr. Melamed contributed to the invention claimed in U.S. Patent Application No. 09/120,575 entitled "Streaming Modules". Mr. Melamed was named as a co-inventor on this application and executed a Declaration in connection with this application. A copy of the executed Declaration bearing Mr. Melamed's signature is attached as **Exhibit A**.
4. Subsequent to his work on the Streaming Modules invention, Mr. Melamed ended his employment at Appstream.
5. After Mr. Melamed's departure, employees remaining at Appstream continued work on the "Streaming Modules" concept. This work resulted in the development of a number of new inventions. U.S. patent applications have been filed for these inventions.
6. The new applications claim priority from the original Streaming Modules patent application. As explained to me by Appstream's U.S. patent counsel, at least one claim in each of these new applications includes subject matter from the original Streaming Modules patent application to which Mr. Melamed had contributed. As a result, Mr. Melamed was identified as a co-inventor on the new applications and his name appears in the Declarations to be signed by the inventors.
7. The new applications which were filed are:

Method And Apparatus For Determining Order Of Streaming Modules
Filed: 12/22/2000 Serial No: 09/745,646
Attorney Docket No. 6032/17

Method And Apparatus For Decreasing The User-Perceived
System Response Time In Web-Based Systems
Filed: 12/22/2000 Serial No: 09/747,260
Attorney Docket No. 6032/18

Apparatus And Method For Improving The Delivery Of Software
Applications And Associated Data In Web-Based Systems
Filed: 12/22/2000 Serial No: 09/746,877
Attorney Docket No. 6032/19

Method And System For Executing Network Streamed Applications
Filed: 12/28/2000 Serial No: 09/750,835
Attorney Docket No. 6032/20

Method And System For Streaming Software Applications To A Client
Filed: 12/28/2000 Serial No: 09/751,105
Attorney Docket No. 6032/21

Streaming Of Archive Files
Filed: 12/29/2000 Serial No: 09/751,190
Attorney Docket No. 6032/23

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8. I have made numerous attempts over the past several months to obtain Mr. Melamed's signature on the Declarations for these patent applications and have discussed the matter with him on many occasions by telephone.
9. Mr. Melamed has refused to review the patent applications and execute the Declarations.
10. Ms. Zorina Ben-Zvi, Appstream LLC's finance manager, forwarded copies of the Declarations to Mr. Melamed by messenger on March 27, 2001 and later by e-mail on April 29, 2001.
11. On May 3, 2001, I had a conference with Mr. Melamed to discuss why he was named as a co-inventor on the new patent applications even though he was no longer an employee of the company. Following that conversation, Ms. Ben-Zvi forwarded to Mr. Melamed by e-mail a cover letter prepared with the assistance of our U.S. patent counsel. The letter indicated that his signature was required because of the relationship between the new applications and the original Streaming Modules patent application to which he contributed. This cover letter was prepared in anticipation of providing copies of the various patent applications to Mr. Melamed for review.
12. One issue which was discussed with Mr. Melamed was the confidential nature of the applications. The patent applications at issue have not been published and contain disclosure of technical features that are proprietary to Appstream and which were developed after Mr. Melamed's departure from Appstream. Because Mr. Melamed is no longer an employee of Appstream, copies of the applications were offered to him for review on the condition that he execute Appstream's standard non-disclosure agreement.
13. I discussed the confidential nature of the applications with Mr. Melamed and Ms. Ben-Zvi sent copies of a non-disclosure agreement to him for review and execution.
14. Mr. Melamed indicated that he would not execute any documents without approval from his attorney.

15. Subsequently, I was informed by Mrs. Zorina Ben-Zvi that neither Mr. Melamed nor his attorney would execute the non-disclosure agreement and that, consequently, he would not review the patent applications or execute the Declarations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 5, 2001



Udi Volk

Udi Volk



EXHIBIT A

PATENT
ATTORNEY DOCKET NO: 10133/004001

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled STREAMING MODULES, the specification of which

☒ is attached hereto.

☐ was filed on _____ as Application Serial No. _____
and was amended on _____.

☐ was described and claimed in PCT International Application No. _____

filed on _____ and as amended under PCT Article 19 on _____

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I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information I know to be material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: James V. Mahon, Reg. No. P-41,966, Victor Siber, Reg. No. 27,149; John B. Pegram, Reg. No. 25,198; Stephan J. Filipek, Reg. No. 33,384; Andrew T. D'Amico, Jr., Reg. No. 33,375; Samuel Borodach, Reg. No. 38,388.

Address all telephone calls to James V. Mahon, Esq. at telephone number 212/765-5070.

Address all correspondence to James V. Mahon, Esq., Fish & Richardson P.C., 45 Rockefeller Plaza, New York, NY 10111.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Full Name of Inventor: Uri Raz

Inventor's Signature: 

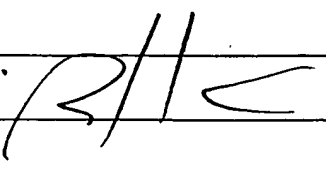
Date: 7/22/98

Residence Address: Fairlawn, New Jersey

Citizen of: Israel

Post Office Address: 36-02 Hillside Terrace, Fairlawn, NJ 07410

Full Name of Inventor: Yehuda Volk

Inventor's Signature: 

Date: 7/22/98

Residence Address: Tel-Aviv, Israel

COMBINED DECLARATION AND POWER OF ATTORNEY CONTINUED

Citizen of: Israel

Post Office Address: 10 Rembrandt St., Tel-Aviv, Israel

Full Name of Inventor: Shmuel Melamed

Inventor's Signature:  Date: 7/22/98

Residence Address: Ramat-Gan, Israel

Citizen of: Israel

Post Office Address: 35 Neve Yehushua, Ramat-Gan, Israel

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